



MEMORANDUM

TO: Senator Alberta Darling and Representative John Nygren,
Joint Committee on Finance cochairs

FROM: Rick Champagne, chief

DATE: December 18, 2019

SUBJECT: Governor's call for a special meeting of the Joint Committee on Finance

You asked whether the governor may call a meeting of the Joint Committee on Finance, set the agenda for that meeting, and compel the attendance of members of the committee. For the reasons discussed in this memorandum, the governor may call a meeting of JCF but may not require the JCF cochairpersons to convene any meeting, require JCF to consider any matter, or compel any member to attend that meeting.

Discussion

Wis. Stat. § 13.10 (1) provides that “The joint committee on finance shall hold regular quarterly meetings and shall hold special meetings upon call of the governor or upon call of the cochairpersons for the purposes of considering matters under this section.” The governor’s power to issue a call for a JCF meeting was created in 1975 and was modeled after the governor’s existing power to call a meeting of the Board on Government Operations, which before 1975 exercised many of the current Wis. Stat. §§ 13.10 and 13.101 powers of JCF.¹ In investigating the matter and in discussions with Legislative Fiscal Bureau staff, I have found no prior instance when the governor issued a call for a meeting of JCF under Wis. Stat. § 13.10 (1). Legislative staff indicate that the usual way for governors to have JCF meet on matters of interest is for gubernatorial or administration staff to work informally with the JCF cochairpersons to schedule a meeting at a time determined by the cochairpersons. The scheduling of a meeting is usually accomplished through cooperation and negotiation and not through the governor’s issuance of a formal JCF meeting call.

¹ Ch. 39, Laws of 1975. The governor’s power to call for a meeting of the Board of Government Operations can be found in Wis. Stat. § 13.58 (1) (1973). For a history of the Joint Committee on Finance, see Legislative Fiscal Bureau, *Joint Committee on Finance*, Informational Paper 76 (Madison, WI: Legislative Fiscal Bureau, January 2019), http://docs.legis.wisconsin.gov/misc/lfb/informational_papers/january_2019. This paper may be found [here](#).

There is no case law on the governor's power to call a JCF meeting under Wis. Stat. § 13.10 (1). Hence, a court has not adjudicated the issue of whether the governor's power to force a legislative committee to meet violates the separation of powers doctrine or, conversely, whether a legislative committee must meet at a time and place and on a matter determined by the governor alone. However, unlike the governor's ability to call a special session of the legislature, which is a constitutional power,² the governor's ability to call a JCF meeting is only a statutory power. It is a power that directly affects the internal operations of the legislature: Governor Evers's call of December 16, 2019, requires a legislative committee, on which the governor does not serve, to meet at a time and place and on a matter determined entirely by the governor.³ This implicates constitutional issues.

Under the Wisconsin Constitution, all legislative power is vested in the senate and the assembly, and each house of the legislature "may determine the rules of its own proceedings."⁴ Under the constitution, rules of proceeding concern those practices or procedures used by the legislature in exercising its legislative powers. Rules of proceeding may be found in the constitution; in legislative rules; in legislative custom, usage, and the unwritten practices of each house of the legislature; in general parliamentary law; in rulings of legislative presiding officers; and even in the statutes.⁵ Importantly, according to *Mason's Manual of Legislative Procedure*, rules of proceeding are "not restricted to the proceedings of the body in ordinary legislative matters, but extend to determination of propriety and effect of any action taken by the body in the exercise of any power, in the transaction of any business or performance of any duty conferred upon it by the constitution."⁶ In the matter at hand, who serves on legislative committees and when, how, and on what legislative committees meet are rules of proceeding, reserved to the legislature.

The issue of whether the legislature must follow a statutory rule of proceeding was adjudicated in *State ex rel. La Follette v. Stitt*.⁷ In *Stitt*, the court considered whether a law authorizing the issuance of operating notes was invalid because the legislature had not followed a statutory procedure in referring the matter to a legislative committee. The court held that the legislature need not comply with statutes that require the referral of bills to legislative committees. The court acknowledged that legislative procedural rules assume various forms, even in the guise of statutory text, but the effect is the same—these rules cannot be enforced by the courts.

The *Stitt* court was clear in its reasoning: "If the legislature fails to follow self-adopted procedural rules in enacting legislation, and such rules are not mandated by the constitution, courts will not intervene to declare the legislation invalid."⁸ The legislature is free to follow or

² Wis. Const. art. IV, § 11; Wis. Const. art. V, § 4.

³ Governor Evers's call may be found at http://www.thewheelerreport.com/wheeler_docs/files/121619evers_01.pdf.

⁴ Wis. Const. art. IV, § 1; Wis. Const. art. IV, § 8.

⁵ For a summary of the sources of rules of proceedings, see *Des Moines Register & Tribune v. Dwyer*, 542 N.W.2d 491, 498 (Iowa 1996).

⁶ *Mason's Manual of Legislative Procedure* (Denver, Co: National Conference of State Legislatures, 2010), section 3.4. An expansive reading of the rules of proceedings clause can be found in *Witherspoon v. State ex rel. West*, 103 So. 134, 138 (Miss. 1925), where the court asserted that "words in which the grant of power . . . to adopt rules of procedure is couched are about as broad and comprehensive as the English language contains."

⁷ 114 Wis. 2d 358, 338 N.W.2d 684 (1983).

⁸ 114 Wis. 2d 358, 365.

not to follow its own procedures or rules of proceedings, even if they are enacted into law. The court added that “we will not invalidate a legislative action unless the legislative procedures or statute itself constitutes a deprivation of constitutionally guaranteed rights.”⁹ The court will not require the legislature to follow a legislative procedure, even if the procedure is required by statute, unless the procedure is required in the constitution or its abrogation would violate other constitutional provisions. In short, the legislature may refuse to follow a statutory rule of proceeding and the courts will not enforce the statute.

Under Wis. Stat. § 13.10 (1), the governor may call a JCF meeting to take up matters under that section. However, if the JCF cochairpersons fail to convene a meeting or if any senator or representative on JCF chooses not to attend the meeting, the governor has no power to require either that the cochairpersons convene the meeting or that a senator or representative attend the meeting. Under *Stitt*, the matter cannot be litigated. The legislature has exclusive control over these matters. The courts will not intervene to require a legislative committee to meet at a certain time or place or on a specific matter, even if directed by the governor pursuant to statute. Because Wis. Stat. § 13.10 (1) deals with a purely internal legislative matter—the convening of legislative committees—the courts will not adjudicate any violation of the statute.

Concluding Comments

The rules of proceedings clause under article IV, section 8, of the Wisconsin Constitution provides one of the most important powers of the legislature. This power is modeled after similar language in the U.S. Constitution¹⁰ and is found in every state constitution except for North Carolina.¹¹ This clause gives the legislature, and not the executive branch, exclusive control over its internal operations as they relate to the exercise of legislative power. Every state legislature conducts its business through legislative committees. When committees meet, who will preside over committee meetings, where committees will meet, and what bills or issues committees will consider are all internal legislative matters reserved for legislative determination.

Legislative rules are silent on many matters affecting committee meetings and activities, but they do provide that standing committees meet on the call of their chairpersons and that chairpersons decide the business before committees.¹² How committees meet and conduct their business are also matters of longstanding practice. Wis. Stat. § 13.10 (1) gives the governor a role in internal legislative matters, and the legislature may certainly allow the governor to exercise this role by complying with any call for JCF to meet. But the Wisconsin Constitution grants the legislature the power to determine how it will conduct its internal affairs. The JCF cochairpersons determine whether the committee will meet, how the public notice for that meeting will be worded and distributed, how the official minutes of any meeting will be transcribed and authenticated, and what powers and manner of their exercise are had by committee assistants and even the committee secretary. These are all internal matters reserved to the legislature under article IV,

⁹ 114 Wis. 2d 358, 369.

¹⁰ U.S. Const., art. 1, § 5, cl. 2, provides that “Each house may determine the Rules of its Proceedings.”

¹¹ *Mason’s Manual of Legislative Procedure* (Denver, Co: National Conference of State Legislatures, 2010), section 3.1.

¹² Assembly Rule 11 (3) and (9); Senate Rule 26.

section 8, of the Wisconsin Constitution. The governor may call a meeting of JCF but may not require the JCF cochairpersons to convene any meeting, require JCF to consider any matter, or compel any member to attend that meeting.

I hope this information is helpful. Please contact me if I can be of further assistance.